IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JANET WIERZBA-WYSONG,	:	
Plaintiff,	:	Case No. 3:12cv015
vs.	:	JUDGE WALTER H. RICE
COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	

DECISION AND ENTRY VACATING REPORT AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE (DOC. #15) FINDING THAT COMMISSIONER'S DECISION OF NON-DISABILITY IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND, ACCORDINGLY, THAT PLAINTIFF WAS NOT ENTITLED TO BENEFITS UNDER THE SOCIAL SECURITY ACT; AND REMANDING THE CAPTIONED CAUSE TO THE MAGISTRATE JUDGE FOR FURTHER CONSIDERATION OF CERTAIN INTERVENING AUTHORITY FROM UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT; CASE TO BE PLACED ON THIS COURT'S INACTIVE DOCKET

Plaintiff has brought this action pursuant to 42 U.S.C. § 405(g) to review a decision of the Defendant Commissioner denying Plaintiff's application for Social Security disability benefits. On January 30, 2013, the United States Magistrate Judge filed a Report and Recommendations (Doc. #15), recommending that the Commissioner's final decision on non-disability be found supported by substantial evidence and that Plaintiff, accordingly, be found to be non-disabled within the meaning of the Social Security Act and, therefore, not entitled to benefits consistent with this Act.

On March 12, 2013, the United States Court of Appeals decided a significant social security matter, to wit: Charles Gayheart v. Commissioner of Social Security, Case No. 12-3553. Given that said decision, which was unavailable to the Magistrate Judge at the time of his Report and Recommendations, is both significant and indisputably relevant to at least two of the three findings made by the Magistrate Judge herein (the manner in which the Administrative Law Judge dealt with the opinions of Plaintiff's treating physician and psychiatrist and the Administrative Law Judge's finding on the credibility of Plaintiff, with possible relevancy to the third issue set forth by the Magistrate Judge, the validity of the Administrative Law Judge's hypothetical question to the vocational expert), it is deemed by the undersigned to be consistent with fundamental fairness, both to the Plaintiff and to the Defendant Commissioner, that the Magistrate Judge's Report and Recommendations of non-disability be vacated, and that the captioned cause be remanded to the Magistrate Judge for further review of the captioned matter in light of the above referenced intervening authority, authority which was not available to him at the time the Report and Recommendations were rendered.

In the interim, pending a new Report and Recommendations from the United States Magistrate Judge, and any briefing thereon by the parties, the captioned cause will be placed upon this Court's inactive docket.

March 18, 2013

WALTER H. RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Counsel of record